

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 16645
[REDACTED],	)	
	)	DECISION
Petitioner.	)	
_____	)	

On January 18, 2002, the Income Tax Audit Division of the Idaho State Tax Commission (Tax Commission) issued a Notice of Deficiency Determination to [Redacted] (taxpayer), asserting additional income tax, substantial understatement penalty and interest for the 1998 and 1999 taxable years in the total amount of \$34,589. On March 20, 2002, the taxpayers filed a timely appeal and petition for redetermination. An informal conference was held via telephone on June 2, 2003. The Tax Commission, having reviewed the file, hereby issues its decision.

**FACTS AND PROCEDURAL HISTORY**

[Redacted] moved to Idaho in 1998. According to the 1998 part-year Idaho resident income tax return filed by [Redacted], he resided in Idaho for the last five months of the 1998 calendar year. [Redacted] filed as a full-year Idaho resident for 1999.

On his 1998 federal individual income tax return, [Redacted] reported a pass-through short-term capital loss of \$539,169 from an S-Corporation called [Redacted] Corporation. After netting this pass-through loss against the other capital gains and losses recognized by [Redacted] in 1998, he had a total short-term net capital loss of \$437,538. [Redacted] correctly applied \$3,000 of that loss on his 1998 federal return as allowed by Internal Revenue Code § 1211(b). That left a \$434,538 short-term capital loss carryover, which [Redacted] applied on his 1999 federal individual income tax return to offset a net short-term capital gain he recognized in that year. [Redacted] made no adjustments on his 1998 Idaho part-year resident income tax return or

his 1999 Idaho full-year resident income tax return relating to the federal net short-term capital loss he incurred in 1998.

[Redacted] 1998 and 1999 Idaho individual income tax returns were selected for audit. Among the audit adjustments made to those returns was to recalculate the amount of the net short-term capital loss incurred in 1998 that was allowed to be carried over to 1999 under Idaho's tax laws. As discussed in greater detail below, the audit staff determined the correct amount of the Idaho net short-term capital loss carryover was only \$126,927. This resulted in an adjustment of \$307,611 to [Redacted] 1999 Idaho income tax return. [\$434,538 federal capital loss carryover claimed on Idaho return, less \$126,927 Idaho capital loss carryover allowed = \$307,611 audit adjustment]. There were a few other audit adjustments made to [Redacted] 1998 and 1999 Idaho returns, but this adjustment was by far the biggest and is the only adjustment at issue in this administrative protest.

Because [Redacted] had lived in Idaho for only the last five months of the 1998 taxable year, the audit staff determined that only 5/12 of the pass-through short-term capital loss from [Redacted] Corporation qualified as an Idaho capital loss. Thus, of the \$539,169 pass-through short-term loss incurred in 1998, only \$224,654 qualified as an Idaho capital loss. [ $\$539,169 \times 5/12 = \$224,654$ .] When netted against the other capital gains and losses recognized by [Redacted] in 1998 that were taxable by the State of Idaho, the amount of the Idaho capital loss carryover that could be applied on his 1999 Idaho return was reduced to \$126,927. [Redacted] has protested this audit adjustment.

## OPINION

Idaho imposes its income tax on individuals that are required to file an Idaho income tax return. See Idaho Code § 63-3024. The tax is imposed on the individual's "Idaho taxable income." For a part-year Idaho resident, the term "Idaho taxable income" is made up of that individual's:

Idaho taxable income as computed for a resident for the portion of the tax period during which [he or she] is domiciled in or residing in Idaho, plus . . . those components of Idaho taxable income which are derived from or related to sources within Idaho for that portion of the tax period during which [he or she] is not domiciled in and is not residing in Idaho.

Idaho Code § 63-3026A(2). Stated another way, Idaho Code § 63-3026A(2) provides that all income from Idaho sources, plus all non-Idaho source income received while domiciled in or residing in Idaho, is included as Idaho taxable income of a part-year resident. In the present case, it does not appear that any of the pass-through capital loss from [Redacted] Corporation is from an Idaho source. As a result, that loss is included as part of [Redacted] Idaho taxable income only if it was received while [Redacted] was domiciled in or residing in Idaho.

Normally, income or loss will be treated as received when it is actually or constructively received by a part-year resident taxpayer. See Idaho Income Tax Administrative Rule 250.03, IDAPA 35.01.01.250.03 ("For purposes of determining if income is reportable to Idaho by a part-year resident, a cash basis taxpayer is considered to have earned or received income when it is actually or constructively received, except as provided in Subsections 250.04 and 250.05.") The Income Tax Administrative Rules go on to provide an exception to this general rule with respect to pass-through income from an S-Corporation or partnership. As provided in Idaho Income Tax Administrative Rule 250.05.a: "For a part-year resident who is a shareholder in an S corporation, or a partner in a partnership, the income, gains, losses and other pass-through items

from the S corporation or partnership are treated as received ratably during the taxpayer's taxable year." IDAPA 35.01.01.250.05.a. Under this rule, the \$539,169 pass-through short-term capital loss from Cowen Capital Corporation is treated as having been received by [Redacted] ratably during the 1998 taxable year. Thus, 7/12 of the loss is treated as having been received by [Redacted] prior to moving into Idaho, and 5/12 is treated as having been received after he moved into this State.

In his letter of protest, [Redacted] contends that in computing his Idaho taxable income for 1998 the pass-through capital loss from [Redacted] Corporation should be treated as having been received on the actual dates in 1998 that the S corporation incurred the capital losses. [Redacted] Corporation did not file an Idaho corporate income tax return for 1998, so the Tax Commission is unable to determine what the actual dates that the S corporation incurred the short-term capital losses that were passed through to [Redacted]. In any event, the argument being advanced by [Redacted] is directly contrary to the treatment required by Income Tax Administrative Rule 250.05.a. [Redacted] has not provided any cogent reason why the Tax Commission should ignore its Administrative Rule in this case.

It is well settled in Idaho that a Notice of Deficiency Determination issued by the Idaho State Tax Commission is presumed to be correct. Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2, 716 P.2d 1344, 1346-1347 n.2 (Ct. App. 1986). The burden is on the taxpayer to show that the tax deficiency is incorrect or otherwise erroneous. [Redacted] has not met that burden here. To the contrary, Income Tax Administrative Rule 250.05.a is directly on point and was correctly applied by the audit staff. As a result, the Tax Commission has no alternative but to uphold the audit adjustment. The correct amount of the Idaho capital loss carryforward to be applied in 1999 was \$126,927.

## ORDER

WHEREFORE, the Notice of Deficiency Determination dated January 18, 2002, is hereby APPROVED, AFFIRMED AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following taxes, penalties, and interest:

<u>YEAR</u>	<u>TAX (REFUND)</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1998	\$ (15)		\$ (5)	\$ (20)
1999	27,577	2,758	7,088	<u>37,423</u>
		TOTAL DUE		<u>\$37,403</u>

Interest is calculated through December 31, 2003, and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6)(b) until paid.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is enclosed with this decision.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

## CERTIFICATE OF SERVICE

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 2003, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]

Receipt No.

[REDACTED]

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